ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RECEIVED

SEP 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

PETITION FOR RECONSIDERATION

AMSC Subsidiary Corporation ("AMSC") hereby urges the Commission to reconsider the portion of its *Report and Order* in the above-referenced docket that includes Mobile Satellite Service among the services that are subject to rate integration. Mobile Satellite Service as provided by AMSC is a unique service that includes the undifferentiated provision of local, interstate, and international communications services. Congress does not appear to have intended to include MSS in its rate integration requirement. In the alternative, the Commission should clarify that AMSC's rate structure -- which is based in part on the amount of satellite power required for a call and the fact that more satellite power is required for calls to or from mobile terminals in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands than for calls to or from mobile terminals in the continental United States -- is consistent with the Commission's rate integration policy. The Commission's rate integration policy has always recognized that unique economic and technical factors may justify exceptions to full rate integration, and AMSC's rate structure is clearly justified by such considerations. If the Commission is not prepared to make a finding that AMSC's rate structure is consistent with its integration policy, then the Commission should forbear from imposing rate integration on AMSC. AMSC's MSS system is unique: it provides a relatively small amount of capacity and it represents a very risky

undertaking in a highly competitive mobile services market, all of which requires pricing flexibility. Moreover, AMSC designed its satellite system and established its rate structure based on specific Commission requirements and approvals.[1/]

Background

Following the launch of its first satellite in April 1995, AMSC operates a satellite system that provides two-way mobile voice communications throughout the United States, including Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands and coastal waters. The system, requiring an investment of more than $650 million, has the capacity to provide approximately 1500 voice channels for land mobile, maritime and aeronautical communications. Although AMSC's customers at times use the system for what might be considered interstate communications, MSS in fact is quite unique, since a significant portion of the traffic on AMSC's system is more properly characterized as local and international communications.[2/] A particularly high percentage of the maritime traffic is expected to be international calls. Due, however, to AMSC's system having relatively large beam footprints and its service being mobile, AMSC is unable to distinguish local and international traffic from interstate traffic.

AMSC's satellite has five slightly overlapping beams. The three central beams cover the continental United States. One peripheral beam covers Alaska and Hawaii and nearby coastal

---

1/ AMSC has requested a one-year extension of the compliance deadline, in part to provide sufficient time for the Commission to take action on this Petition for Reconsideration. Request for Extension of Compliance Deadline, CC Docket No. 96-61 (August 23, 1996).

2/ For purposes of this request, AMSC defines local calls as communications between an MSS terminal in one LATA and a terminal (either mobile or fixed, including a telephone connected to the PSTN) in the same LATA. Interstate calls are communications between an MSS terminal in one state and another state. International calls are communications between an MSS terminal outside the U.S. (including more than 12 miles offshore) and anywhere else.

areas; the other peripheral beam covers Puerto Rico, the U.S. Virgin Islands, and a significant amount of the Caribbean. Much of the traffic in these two peripheral beams is expected to be maritime communications. The amount of power required to communicate in either of the peripheral beams, significantly, is more than twice that required to communicate in any of the central beams. In simple terms, this means that AMSC could provide only half as many communications channels if all of its traffic was in these lower-power beams. This power differential is a product of AMSC's satellite design. Specifically, due to restrictions on the maximum power and weight of the satellite, AMSC was constrained to a limited number of spot beams. As a result, the southern beam has to be designed to cover a larger area than the central beams, and the Alaska/Hawaii beam had to be designed to cover two distinct, widely separated regions. Thus, in both cases, economic and technical considerations led to the design of a system requiring higher power to operate in certain beams.

The higher power requirement for these areas is characteristic of other domestic satellites. In the Fixed Satellite Service, however, it is relatively inexpensive to compensate for the need for higher power in areas such as Alaska and Hawaii by installing larger ground antennas. In a mobile environment, however, larger ground antennas are not practical.

AMSC charges a higher rate generally for any service that requires more power than other services. For instance, AMSC charges more to users with relatively low-gain antennas. Similarly, AMSC assesses a beam surcharge when a customer operates a mobile terminal in an area served by one of the lower-power beams. These differences in rates provide AMSC with a price mechanism for allocating its limited power budget and assure that the satellite and the spectrum are used efficiently.

Discussion

I. The Statutory Requirement for Rate Integration Does Not Clearly Cover AMSC

Section 254(g) of the Communications Act does not specifically identify AMSC as being within the class of providers of telecommunications services required to integrate its rates. This provision explicitly encompasses only "interstate interexchange" providers; while AMSC is at times a provider of interstate interexchange service, AMSC uses its facilities to simultaneously provide international and local service. Moreover, because its service is mobile and is reliant on a satellite with relatively large beams, AMSC is unable to distinguish among these classes of traffic. Thus, the applicability of section 254(g) to a hybrid service provider like AMSC is unclear.

Given the ambiguity of the plain language of this provision, it is appropriate to look to the statute's legislative history for guidance. As stated by the Supreme Court, courts have long used legislative history in order to interpret ambiguous statutory provisions. *See, e.g., Barnhill v. Johnson*, 112 S.Ct. 1386, 1391 (1992); *Wisconsin Public Intervenor v. Mortier*, 111 S.Ct. 2476, 2485 n.4 (1991). Where a court reviews an agency's interpretation of a statute, and that statute is silent or ambiguous with respect to a specific issue, the question for that court is whether the agency's answer is based on a permissible construction of the statute. Such construction requires an analysis of the language and history of that statute. *South Carolina Public Service Authority v. F.E.R.C.*, 850 F.2d 788, 791 (D.C. Cir. 1988) (quoting *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843, and n.9, 104 S.Ct. 2778, 2781-82 and n.9 (1984). Moreover, as the D.C. Circuit Court recently ruled, even where the language of a statute is superficially clear, contradictory legislative history may call such apparent clarity into

question *ASTV v. F.C.C.*, 46 F.3d 1173, 1180 (D.C. Cir. 1995).

From the available legislative history for section 254(g), it appears that Congress did not intend that MSS providers be affected by this rate integration requirement. Specifically, the Conference Report on the Telecommunications Act of 1996 states the following in part:

> The conferees intend the Commission's rules to require that geographic rate averaging and rate integration, and to incorporate geographic rate averaging and rate integration, and to incorporate the policies contained in the Commission's proceeding "Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska and Puerto Rico/Virgin Islands (61 FCC 2d 380 (1976))."

The Conference Report makes clear that in implementing section 254(g), the Commission must look to the policies described in its 1976 *Rate Integration Order*. The Commission's 1976 order contemplates the imposition of rate integration only on various fixed telecommunications services, including conventional long distance telephone service, "specialized" services such as data and private line voice transmissions, and record carrier services. 61 FCC 2d at 383, 391. Prior to the instant proceeding, the Commission never applied its rate integration policy to the kind of hybrid service provided by AMSC. Moreover, although the Commission now dismisses the significance of this decision, the Commission in April 1993 upheld as not patently unlawful AMSC's Mobile Telephone Service tariff. *Order*, 8 FCC Rcd 2871 (1993). This decision was in response to a petition directly challenging the higher rates assigned to AMSC's two peripheral beams. The Commission's 1993 ruling strongly suggests that the Commission's 1976 rate integration policy -- which had remained essentially unchanged up to that point -- was not applicable to hybrid service providers such as AMSC.

Thus, it appears that Congress did not intend to include Mobile Satellite Service among

those it intended to subject to the Commission's rate integration policy.

II. The Statute Should Be Interpreted to Recognize the Unique Nature of Mobile Service

Another ambiguity is presented by the law's failure to specify what is meant by "subscribers in each State" being charged the same rates as "subscribers in any other State." AMSC suggests that the Act means for all subscribers to be treated as connected to one state or another, typically by residence or business location. A provider would comply with the Act if it offered the same rates to all subscribers, regardless of the state in which the subscriber resides or has its business headquarters. Thus, read literally, the rates for the service itself are permitted to vary depending, in the case of mobile service, on the location of the mobile terminal. For example, if the mobile terminal is in an area that requires more power, the provider may charge a higher rate, as long as that same higher rate is charged to all subscribers.

III. AMSC's Beam Surcharges are Consistent with the Commission's Rate Integration Policy

Even if it is concluded that Congress' rate integration policy does apply to AMSC, the Commission should rule that AMSC's rate structure complies with the Commission's new rate integration requirements. The Commission has consistently recognized in its rate integration orders that "certain economic or technical factors could warrant some deviation from" full rate integration. *See Rate Integration Order*, 61 FCC 2d 380, 383 (1976); *Second Report and Order*, 35 FCC 2d 844, 857 (1972). From the start, the Commission's rate integration policy was premised on Fixed Satellite Service satellites having eliminated distance as a major cost factor in the provision of message toll telephone service to Alaska, Hawaii, and Puerto Rico/Virgin

Islands. 61 FCC 2d at 383.[3/]

Moreover, in upholding carriers' uniform mileage bands, the Commission clearly recognizes the relevance of cost factors in implementing a policy of rate integration. According to a system of uniform mileage bands, traditional wireline carriers charge a certain per-minute rate for calls covering a certain minimum mileage range, such as 0-1000 miles, and higher rates for successively greater mileage ranges, i.e. 1001-2000 miles, 2001-3000 miles, etc. The Commission permits mileage bands because the cost of transmission over microwave, fiber, and cable becomes greater as the distance of a call increases. MCI Comments, CC Docket 96-61 (April 19, 1996).

The economic and technical factors described in this petition clearly justify AMSC's rate structure. AMSC consistently assesses a higher charge for customers that use more power. The requirement for higher power is a necessary result of the design of its satellite system.

IV. The Commission Should Forbear from Imposing Rate Integration on AMSC

If the Commission is not convinced of the merits of the arguments discussed above, it nonetheless should forbear from imposing its rate integration rules on AMSC and allow AMSC the flexibility to charge more for the higher power required to provide service to mobile terminals in the lower-power beams. As discussed below, AMSC's request meets the requirements of the Act for regulatory forbearance.[4/] A surcharge of twenty percent for service in

---

[3/] As discussed above, AMSC's system is different from traditional FSS satellites, particularly since it is impractical to increase the size of MSS mobile terminal antennas in areas requiring higher power.

[4/] Regulatory forbearance is in accordance with the terms of 47 U.S.C. § 160, which requires that enforcement of the Commission's rate integration rule be unnecessary to ensure that AMSC's rates are just and reasonable and are not unjustly or unreasonably

(continued...)

the lower-power beams is just and reasonable, and consumers will not be adversely affected.

A. MSS is unique

It cannot be said too strongly that Mobile Satellite Service is not a traditional long distance service. As described above, AMSC provides a variety of services simultaneously. Many of the calls handled by AMSC's system, and possibly a majority of the maritime traffic and the traffic in the lower-power beams, will be calls from international waters.

Requiring AMSC to integrate its rates and eliminate any surcharges for its service in its lower-power beams will not have an impact on long distance service in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands. MSS is an entirely different market and the overall capacity of AMSC's system is insignificant compared to the interstate traffic generated in those areas. It will, however, have a significant impact on AMSC's ability to use its available capacity efficiently. Requiring AMSC to integrate its rates and eliminate any surcharges for its lower-power beams will take away AMSC's ability to use a reasonable price system to maximize its capacity and better provide service to all customers. With so little spectrum available in the MSS L-band, it is important that it be used efficiently. See *Notice of Proposed Rulemaking* in IB Docket No. 96-132, FCC 96-259 (June 18, 1996) (proposing to modify AMSC's license to provide additional spectrum due to the inability of the U.S. to coordinate sufficient spectrum in the bands currently assigned to AMSC).

In addition, MSS is a new service. AMSC has invested over $650 million in the development of the U.S. MSS system, taking a substantial risk that it will be able to develop the

---

4/ (...continued)
discriminatory, and unnecessary for the protection of consumers. Such forbearance also must be consistent with the public interest.

market for this service sufficiently quickly to justify this large investment. AMSC needs the flexibility in pricing. Also, AMSC competes internationally with TMI, a Canadian company that operates a satellite with the same footprint as that of AMSC, and Inmarsat, which operates an established maritime MSS system in the areas covered by AMSC's lower-power beams. Domestically, AMSC competes with terrestrial service providers, including rural cellular and SMRS, and with satellite services such as Qualcomm's Omnitracs.

B. The Commission previously approved AMSC's design and rate structure

The equities of this request also include AMSC's reliance on specific Commission requirements and approvals in designing its system and structuring its rates. The Commission required the U.S. MSS system to provide service to the areas covered by the lower-power beams that are the subject of a surcharge. *Memorandum Opinion, Order & Authorization*, Gen. Docket No. 84-1234, 4 FCC Rcd 6041, 6055 (1989). The Commission approved the satellite design that requires substantial additional power for service to mobile terminals in those beams. *Memorandum Opinion and Order*, File Nos. 7/8/9-DSS-MP/ML-90, 8 FCC Rcd 4040 (1993). As discussed earlier, when the issue of a surcharge for service in those beams was raised in 1993, the Commission permitted AMSC's tariff to go into effect and issued an order that the tariff was not patently unlawful. Inasmuch as the legal issue of the surcharge was squarely before the Commission in that proceeding, AMSC reasonably relied on the ruling to indicate that the surcharge was permissible.

Conclusion

Therefore, based on the foregoing, AMSC urges the Commission to exclude Mobile Satellite Service from those services subject to rate integration by finding that Congress did not

intend to include MSS as an interstate interexchange service. In the alternative, the Commission should find that AMSC's rate structure is consistent with rate integration requirements or is subject to forbearance.

Respectfully submitted,

AMSC SUBSIDIARY CORPORATION

Bruce D. Jacobs
Glenn S. Richards
Stephen J. Berman
Fisher Wayland Cooper Leader
& Zaragoza L.L.P.
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

Lon C. Levin
Vice President and Regulatory Counsel
AMSC Subsidiary Corporation
10802 Parkridge Boulevard
Reston, Virginia 22091
(703) 758-6000

Dated: September 16, 1996

P:\WP51DOC\AMSC\PETRECON.I16

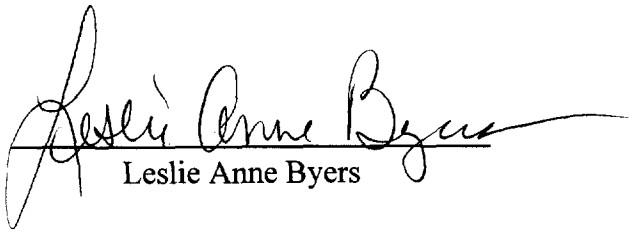
CERTIFICATE OF SERVICE

I, Leslie Anne Byers, do hereby certify that I have this 16th day of September, 1996, caused the foregoing "**PETITION FOR RECONSIDERATION**" to be hand delivered to the following:

Patrick J. Donovan
Common Carrier Bureau
Federal Communications Commission
2033 M Street, N.W., Room 500
Washington, D.C. 20554

William Kirsch
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 586
Washington, D.C. 20554

Ruth Milkman
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 821
Washington, D.C. 20554



Leslie Anne Byers